

CONQUEROR TRUST COMPANY v. COXSEY.

Opinion delivered February 1, 1932.

1. GUARDIAN AND WARD—FOREIGN CURATOR—CUSTODY OF PROPERTY.—
On application for removal of assets by a Missouri curator of the estate of a ward residing in that State, testimony that the ward's mother had improvidently managed her own estate *held* irrelevant and inadmissible.
2. GUARDIAN AND WARD—FOREIGN CURATOR—REMOVAL OF ASSETS.—
Where the Missouri curator of the estate of a ward residing in that State failed to file a bond in double the value of the ward's estate, as required by the laws of Arkansas, removal of the ward's assets from this State was properly refused.
3. GUARDIAN AND WARD—FOREIGN CURATOR—REMOVAL OF ASSETS.—
Refusal of the probate court to order removal of assets of a non-resident ward to the State of her residence, being a matter of discretion under Crawford & Moses' Dig., § 5056, *held* not arbitrary where no abuse of discretion is shown.

Appeal from Carroll Circuit Court; *John S. Combs*,
Judge; affirmed.

STATEMENT BY THE COURT.

This appeal is prosecuted from a judgment denying appellant company, curator of the estate of Rose Mary Coxsey, in the State of her residence, the possession of her estate situated in this State.

Appellant company, a Missouri corporation, was, on the 26th day of March, 1930, at the solicitation of Rose Mary Coxsey, of Webb City, Missouri, a female minor, over the age of 14 years, appointed curator of her estate under the Missouri law; and as such curator it made application to the probate court of Carroll County, Arkansas, for removal of the funds of the estate of its ward. It presented with the application all the record entries of the court of probate in relation to its appointment, and giving bond, duly authenticated, showing the application to the probate court of Jasper County, Missouri, for appointment as curator of the estate of said minor, Rose Mary Coxsey, of 201 E. Broadway, Webb City, Missouri, the waiver by Maude Coxsey, mother of the minor, of her right to be appointed curatrix, and the request that the Conqueror Trust Company, appellant, be appointed curator, the selection of the minor of said company to act as legal curator of her property and estate, setting up the fact that she was over 14 years of age, the bond given in full, filed and approved by said probate court on March 26, 1930, in the amount of \$30,000 as a tentative security.

No answer was filed in the probate court of Carroll County. It appears from the testimony there that Mrs. Maude Coxsey testified that she was the mother of Rose Mary, who lived with her at 201 E. Broadway, Webb City, Missouri; that she owned a hotel there, The Gables, and had lived in the town for more than a year, and that her daughter was born on November 14, 1915, and was 15 years old at the time of the application. The kind and value of the ward's estate in Carroll County was shown to be about \$30,000, including \$21,000 in government bonds, some notes and interests in real estate. It appeared that the Arkansas guardian, Will Coxsey, was a

half brother of Rose Mary, and had been living and doing business in Tulsa, Oklahoma, although it was claimed that he had not removed his citizenship from Carroll County, Arkansas. The trust officer of appellant company, who acted as its agent in having the said company appointed curator of Rose Mary Coxsey, testified that the business of the company was handling estates, acting as administrator, guardian, curator, etc.; that the assets of the company were practically \$8,000,000; and that they filed a blanket bond with the probate court of Jasper County, Missouri, covering its whole liability, and, after the aggregate assets of any individual or estate was determined, an individual bond was filed, this being done to reduce rates. Said the total bond was always 125 per cent. of the amount of assets, illustrating that, if the amount of the assets was twenty or thirty thousand dollars, the bond would be thirty or thirty-five thousand dollars, approximately 125 per cent.; and that no definite bond had been filed in this case, as the aggregate amount of the assets had first to be determined; that the preliminary filing of the approximate amount of the estate was done in order to arrive at the figures for making the bond, which was subject to increase or reduction.

The court denied the application of the curator for an order of removal of the assets of the estate, and an appeal was taken to the circuit court.

No answer was made, although the resident defendant, not present in person, appeared by attorney and cross-examined all the witnesses. The same facts were shown in the circuit court, being in fact undisputed as to the due appointment of the appellant company as curator of the estate of Rose Mary Coxsey, who lived in Webb City, Missouri, with her mother at the time, the giving of the bond in the sum of \$30,000, the estimated value of the ward's estate in Carroll County, Arkansas. On the cross-examination it was attempted to be shown that the mother of the ward had not managed her own property,

received from the estate of her husband in about the same amount as that inherited by Rose Mary, her daughter, wisely or well, and much of it had been dissipated, and further that the ward lived with her mother in Missouri and was under her influence to such an extent that the ward's property might not be as well handled for her interest under the curatorship in Missouri as it had been in Arkansas.

The circuit court also denied the application of appellant company, and refused to make an order for the removal of the ward's estate, and from its judgment the appeal is prosecuted.

L. S. Dewey, for appellant.

Festus O. Butt, for appellee.

KIRBY, J., (after stating the facts). Our statutes provide the procedure for the removal of property of a non-resident ward from this State, where the guardian and ward are both nonresidents. Sections 5054-5057, Crawford & Moses' Digest. The first of said sections provides that, "on producing satisfactory proofs to the court of probate of the proper county according to law that he has given bond or security in the State in which he and his ward reside, in double the amount of the value of the property as guardian, then such guardian may demand or sue for and remove any such property to the place of residence of himself and ward." The undisputed testimony in this case shows that the appellant company had given bond on its appointment as curator by the probate court of Jasper County, Missouri, where it was appointed, in the amount of 125 per cent. of the estimated value of the ward's estate, the amount required given by the laws of Missouri; and also the value of the assets of the appellant trust company were shown to be about \$8,000,000. It was contended, however, that it had not given bond or security in the State in which it and its ward reside "in double the amount of the value of the property," as our statute requires should be done before

application of removal of a ward's estate from this State is granted.

The testimony relative to the improvident management and loss of some of her own estate by the ward's mother by her management of it could not have effect to show that the Missouri curator would not control, conserve and manage the estate of the ward properly, in accordance with the laws of the State of its appointment and the minor ward's residence, and this testimony should not have been admitted.

Since, however, bond in the amount required by our statute was not made by appellant curator upon its appointment, its application for removal of the ward's property from this State to her residence in Missouri was properly rejected by the court, and, even though the bond had been regularly made, the court's refusal to make the order of removal could not be held to be arbitrary and not made because the court was not satisfied that it was for the best interest of the ward that such removal should not take place, the law allowing the court such discretion, and there appearing to be no abuse of this discretion. Section 5056, Crawford & Moses' Digest.

We find no error in the record, and the judgment must be affirmed. It is so ordered.
